

12/14/2016

Hon. Timothy Hillman
US District Court for Massachusetts
Worcester, Massachusetts

Judge Hillman:

I was surprised to hear that citing web URLs for public web pages in a complaint does not inherently incorporate the entire contents of those URLs “by reference” in the complaint. This silenced nearly all of my planned oral argument today.

The net effect is to deprive the Court of the context of the full online discussions surrounding Defendants’ advertising messages, including direct evidence of sales resulting from the ads, direct evidence that Plaintiff’s name was immediately recognized by many of those who replied to Defendants or participated in subsequent discussion of Defendants’ ads, and other items that refute the various Defense assertions in their “reply”.

I was also surprised to hear Ms. Bennett state that she has not even attempted to examine any of the ads placed by Defendants on Yahoo, and the surrounding context, simply because a free Yahoo account is required to access the “groups” facility within Yahoo. This may explain why she has such a fragmented view of Defendants’ 2010 – 2015 ad campaign, as not even all Defendants’ ads were excerpted and attached to the complaint, for fear of it becoming too unwieldy.

If the Defendants’ own words as excerpted in the individual small snippets printed out and physically attached to the complaint are insufficient to overcome the Defense’s newly-made arguments in their “reply” on their motion to dismiss, then I can only conclude that the Court will not easily locate the “context” I attempted to provide today, and further conclude that I must request leave to amend or supplement the complaint to include the aforementioned items rather than see the complaint dismissed. A revised complaint can be completed by Jan 17th, given another scheduled surgery for my wife and the impeding holidays.

If the complaint is sufficient “as is”, then I have no other reason to amend it.

One would ordinarily make this request as part of a written response, but no response was permitted to Defendants’ “reply”, so the only opportunity for discussion was today’s oral arguments.

Thank you for your time and attention,

/s/ James Fischer

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